

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 02-255
FM Broadcast Stations.)	RM-10524
(Depoe Bay, Garibaldi, Cottage Grove,)	
Veneta and Toledo, Oregon))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 30, 2003

Released: May 5, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rulemaking* issued at the request of Alexandra Communications, Inc. licensee of Station KDEP(FM), Channel 288C3, Depoe Bay, Oregon, Signal Communications, Inc., licensee of Station KEUG(FM), Channel 288A, Cottage Grove, Oregon, and Agpal Broadcasting, Inc., licensee of Station KPPT(FM), Channel 264C2, Toledo, Oregon (“Petitioners”), requesting that we substitute Channel 288A for Channel 288C3 at Depoe Bay, Oregon, reallocate Channel 288A from Depoe Bay to Garibaldi, Oregon, and modify the license of Station KDEP(FM) to specify the new community. The petition also requests that we substitute Channel 288C3 for Channel 288A at Cottage Grove, Oregon, reallocate Channel 288C3 to Veneta, Oregon, and modify the license of Station KEUG(FM) to specify the new community. Finally, the petition requests that we reallocate Channel 264C2 from Toledo, Oregon to Depoe Bay, and modify the license of Station KPPT(FM) to specify the new community. Petitioners filed comments reiterating their intentions to file applications to effectuate the changes, and, if authorized, to build each facility promptly. Signal Communications filed separate comments in favor of the upgrade and reallocation of Station KEUG(FM), pledging to file the requisite applications. We received no other comments.

2. This proposal was filed pursuant to Section 1.420(i) of the Commission’s Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station’s present allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of their proposal, Petitioners state that these changes would result in a preferential arrangement of allotments because they would result in the provision of a first local aural transmission service at two of the proposed communities, Garibaldi and Veneta, Oregon, which qualify as communities for allotment purposes, and the reallocation of Channel 264C2 from Toledo to Depoe Bay will retain a first local

¹ See, *Modification of FM and TV Authorizations to Specify a New Community of License (Report and Order in MM Docket No. 88-526)*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures (Second Report and Order in BC Docket 80-130)*, 90 FCC 2d 88, 91 (1988).

aural transmission service at Depoe Bay. In addition, Cottage Grove and Toledo will retain local aural transmission service from Stations KCGR(FM) and KPPT(AM), respectively. Petitioners also state that the proposals in combination will provide an additional reception service to a total of 253,723 persons and no white or gray service areas would be created.

4. We find that Veneta and Garibaldi are communities for allotment purposes. Veneta is an incorporated city with a 2000 Census population of 2,755 persons, and Garibaldi is an incorporated city with a 2000 Census population of 899 persons. None of the communities is in an Urbanized Area, and although the 70dBu contour of Channel 288C3 at Veneta will cover 29% of the Eugene-Springfield Urbanized Area, this is not a sufficient amount to trigger consideration of the proposal pursuant to the principles outlined in *Faye and Richard Tuck*.³

5. We will grant the proposal in the public interest because it will provide Garibaldi and Veneta with their first local aural transmission services without removing the sole local transmission service from Depoe Bay, Cottage Grove or Toledo, which will serve priority (3) of the FM Allotment priorities. It will also allow two stations to upgrade their facilities and serve an additional number of persons. Our staff analysis shows that the proposal from Depoe Bay to Garibaldi will create a net loss of 15,183 persons within an area of 977 square kilometers. Specifically, there will be a gain of 18,309 persons within 1,343 square kilometers and loss of 33,492 persons within 2,320 square kilometers. However, this is offset because the entire loss area is well served with 5 or more services, and the gain area includes an area in which 7,625 persons will gain a fourth service and an area in which 2,763 persons will gain a fifth service. With respect to the proposed reallocation from Cottage Grove to Veneta, our analysis shows a net gain of 187,254 persons. There will be a gain of service to 201,516 persons within 3,819 square kilometers and a loss of service to 14,262 persons within 1,528 square kilometers. It also shows that both the gain area and loss area will remain well served with 5 or more reception services. The proposed reallocation from Toledo to Depoe Bay involves no site change and thus no gain or loss.

6. Our engineering analysis has determined that Channel 288A can be allotted at Garibaldi at a site 11 kilometers (6.8 miles) south of the community.⁴ Channel 288C3 can be allotted at Veneta at a site 4.8 kilometers (3.0 miles) southwest of the community.⁵ Channel 264C2 can be allotted at Depoe Bay at Station KPPT(FM)'s current site 5.9 kilometers (3.7 miles) south of the community.⁶

7. Our action in approving the reallocation and change of community of Station KDEP(FM), Channel 288C3 from Depoe Bay to Garibaldi, Oregon, is premised on the activation of Station KPPT(FM), Channel 264C2 at Depoe Bay to prevent the removal of the community's sole local aural service. Accordingly, consistent with precedent, we will condition the grant of an authorization to operate Station KDEP(FM) on Channel 288A at Garibaldi upon the activation of Station KPPT(FM), Channel 264C2 at Depoe Bay and the grant of program test authority.

8. IT IS ORDERED That effective June 19, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Depoe Bay, Oregon	264C2

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (Allocations Br. 1995).

⁴ Coordinates for Channel 288A at Garibaldi are NL 45-27-50 and WL 123-56-37.

⁵ Coordinates for Channel 288C3 at Veneta are NL 44-01-56 and WL 123-24-19.

⁶ Coordinates for Channel 264C2 at Depoe Bay are NL 44-45-23 and WL 124-03-01.

Garibaldi, Oregon	288A
Cottage Grove, Oregon	263A
Veneta, Oregon	288C3
Toledo, Oregon	--

9. Additionally, IT IS ORDERED That the Secretary of the Commission shall send a copy of such comments to the Petitioners' counsel, RETURN RECEIPT REQUESTED as follows:

Robert Lewis Thompson, Esq. Thiemann, Aitken & Vohra, LLC 908 King Street, Suite 300 Alexandria, VA 22314	Dan J. Alpert, Esq. 2120 N. 21 st Road Arlington, VA 22201
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10. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Alexandra Communications, Inc. for Station KDEP(FM), Channel 288C3, Depoe Bay, Oregon, IS MODIFIED to specify operation on Channel 288A at Garibaldi, Oregon, the license of Signal Communications, Inc., for Station KEUG(FM), Channel 288A, Cottage Grove, Oregon, IS MODIFIED to specify operation on Channel 288C3 at Veneta, Oregon, and the license of Agpal Broadcasting, Inc., for Station KPPT(FM), Channel 264C2, Toledo, Oregon, IS MODIFIED to specify operation on Channel 264C2 at Depoe Bay, Oregon, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, each licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.
- d) Operation of Station KDEP(FM) on Channel 288A at Garibaldi, Oregon, including program test operation pursuant to Section 73.1620, will not be permitted until Station KPPT(FM) activates service on Channel 264C2 at Depoe Bay, Oregon.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Alexandra Communications, Inc, Signal Communications, Inc., and Agpal Broadcasting, Inc., are required to submit rule making fees in addition to the fees required for the applications to effect their respective changes of community.

12. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau